

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

**RHASHEMA DERAMUS,
a/k/a Rhashema Shackelford**

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CR. NO. 2:11-cr-198-MEF

PLEA AGREEMENT

DEFENSE COUNSEL:

BRUCE MADDOX

ASSISTANT U.S. ATTORNEY:

W. BRENT WOODALL

COUNTS AND STATUTES CHARGED:

Count 1 18 U.S.C. § 641

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof;

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

Counts 2-17 18 U.S.C. § 1029(a)(5)

Whoever knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than \$1,000;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

Counts 18-33 18 U.S.C. § 1028A (a)(1)

Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person

shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

Count 34 18 U.S.C. § 1029(a)(3)

Whoever knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices; shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

COUNTS PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1 18 U.S.C. § 641

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof;

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

Counts 2-3 18 U.S.C. § 1029(a)(5)

Whoever knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than \$1,000;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

Counts 18-19 18 U.S.C. § 1028A (a)(1)

Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

Count 34 18 U.S.C. § 1029(a)(3)

Whoever knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices; shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

PENALTIES BY COUNT - MAXIMUM PENALTY:

- Count 1 18 U.S.C. § 641:
A term of imprisonment which may not be more than 10 years; a fine not to exceed \$250,000.00 or the greater of twice the gross gain or twice the gross loss, or both a fine and imprisonment; a period of supervised release not to exceed three years; an assessment fee of \$100.00; and a contribution to VWPA.
- Counts 2 -3 18 U.S.C. § 1029(a)(5):
A term of imprisonment which may not be more than 15 years; a fine not to exceed \$250,000.00 or the greater of twice the gross gain or twice the gross loss, or both a fine and imprisonment; a period of supervised release not to exceed three years; an assessment fee of \$100.00; and a contribution to VWPA.
- Counts 18-19 18 U.S.C. § 1028A(a)(1):
Two years imprisonment in addition to the sentence for the underlying felony; a fine not to exceed \$250,000.00 or the greater of twice the gross gain or twice the gross loss, or both a fine and imprisonment; a period of supervised release not to exceed one year; an assessment fee of \$100.00; and a contribution to VWPA.
- Count 34 18 U.S.C. § 1029(a)(3):
A term of imprisonment which may not be more than 10 years; a fine not to exceed \$250,000.00 or the greater of twice the gross gain or twice the gross loss, or both a fine and imprisonment; a period of supervised release not to exceed three years; an assessment fee of \$100.00; and a contribution to VWPA.

ELEMENTS OF THE OFFENSE(S):

- Count 1 18 U.S.C. § 641:
1. The money or property described in the indictment belonged to the United States;
 2. The Defendant stole and knowingly converted the money or property to her own use or to someone else's use;
 3. The Defendant knowingly and willfully intended to deprive the owner of the use or benefit of the money or property; and
 4. The money or property had a value greater than \$1,000.

Elements: From the Eleventh Circuit Jury Instructions Instruction 21

- Counts 2-3 18 U.S.C. § 1029(a)(5):
1. The Defendant effected transactions with one or more access devices issued to another person or persons;
 2. The Defendant thereby obtained something of value aggregating at least \$1000.00 during a one-year period;

3. The Defendant acted knowingly and with intent to defraud; and
4. The Defendant's conduct affected interstate or foreign commerce.

Elements: From *United States v. Soape*, 169 F.3d 257, 267 (5th Cir. 1999)

Counts 18-19 18 U.S.C. § 1028A(a)(1):

1. The Defendant knowingly transferred, possessed, or used another person's means of identification;
2. Without lawful authority;
3. During and in relation to fraud in connection with access devices as charged in Count 2 (Count 18) and Count 3 (Count 19) of the Indictment.

The Government must prove that the Defendant knew that the identification, in fact, belonged to another actual person, not a fictitious person.

Elements: From the Eleventh Circuit Jury Instructions Instruction 40.3

Count 34 18 U.S.C. § 1029(a)(3):

1. The defendant knowingly possessed fifteen or more access devices;
2. Those devices were unauthorized;
3. The defendant possessed those devices with the intent to defraud; and
4. The defendant's conduct affected interstate commerce.

Elements: From the Seventh Circuit Jury Instructions.

W. Brent Woodall, Assistant United States Attorney, and Bruce Maddox, Esq., attorney for the defendant, pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended, have, with the authorization of the undersigned defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Information herein and a Plea Agreement has been reached by said parties. The parties understand that, if the terms of the Plea Agreement are not accepted by the Court, the defendant will be allowed to withdraw the defendant's plea of guilty and proceed to trial. If the Court accepts this agreement, however, and defendant thereafter breaches this agreement, his guilty plea may not be withdrawn.

GOVERNMENT'S PROVISIONS

1. Upon entering a plea of guilty by the defendant to the offenses charged in Counts 1, 2, 3, 18, 19, and 34 of the Indictment, the attorney for the Government will agree that a two-level reduction in the applicable offense level pursuant to U.S.S.G. § 3E1.1(a) for the defendant's acceptance of responsibility is appropriate, so long as the defendant does not obstruct justice or otherwise fail to accept responsibility for the offense conduct. Should the Government find the defendant assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, and if the defendant otherwise qualifies, the Government will move at sentencing for a further reduction of one level, pursuant to U.S.S.G. § 3E1.1(b). Determination of whether the defendant met her obligation to qualify for the reduction pursuant to U.S.S.G. § 3E1.1 is at the sole discretion of the Government.

2. The Government reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offense and the defendant's background.

3. The parties have reached no agreement on any other Guidelines issues.

4. The Government agrees that a sentence no greater than the low end of the applicable guideline range would be appropriate in this case.

5. The Government agrees to dismiss Counts 4 through 17 and 20 through 33 of the Indictment.

DEFENDANT'S PROVISIONS

1. The defendant agrees to the following:

a. To plead guilty to Counts 1, 2, 3, 18, 19, and 34 of the Indictment.

b. Not to commit any other federal, state, or local offense while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering, or facilitation of any other criminal activity. Determination of whether defendant's conduct is a violation of this provision is at the complete discretion of the Government.

c. The defendant recognizes that the facts used to determine the defendant's Guidelines offense level and sentence will be found by the Court at sentencing by a preponderance of the evidence and that the Court may consider any reliable evidence, including hearsay.

FACTUAL BASIS

On May 21, 2009, in Montgomery County, while aided and abetted by others, the Defendant stole and knowingly converted to her use an income tax refund, the value of which exceeded \$1,000.00, and which was a thing of value of the United States.

On March 18, 2011, in Montgomery County, while aided and abetted by others, the Defendant, knowingly and with intent to defraud, effected multiple transactions with more than fifteen unauthorized access devices which she possessed and which had been issued to other persons. The reason the Defendant effected each of the multiple transactions, which affected interstate commerce, was to receive currency in excess of \$1,000.00, which was the property of the United States and which she did receive. The Defendant received the money by causing fraudulent tax returns to be filed and by causing the refunds generated from those returns to be

loaded onto pre-paid debit cards, from which the Defendant would cause the money to be removed at ATM's. During and in relation to the fraud committed in connection with the access devices, the Defendant knowingly transferred, possessed, and used, without lawful authority, means of identification of the people in whose names the access devices had been issued. The means of identification transferred, possessed, and used by the Defendant included the name, date of birth, and Social Security number of the people in whose names the access devices had been issued. The Defendant knew that the means of identification she used belonged to real people.

COOPERATION AGREEMENT

The defendant agrees to cooperate fully and testify truthfully against any and all persons as to whom the defendant may have knowledge at the grand jury, trial, or whenever called upon to do so, including, but not limited to testifying against any codefendant choosing to proceed to trial. The defendant understands that this agreement does not require the defendant to implicate any other particular individual or individuals or to "make a case," rather it requires the defendant to be truthful and to testify truthfully whenever called upon. The defendant agrees to be available, if required, for the review of documents and other materials and for interviews by law enforcement officers and attorneys for the Government upon reasonable request and to fully and truthfully respond to all questions asked of the defendant by law enforcement officers and attorneys for the Government. The defendant agrees to fully and truthfully disclose to the Government everything the defendant knows about any and all documents and materials in the defendant's possession that relate to the violations charged in this Indictment and any other criminal violations in the Middle District of Alabama and elsewhere. The defendant agrees to submit to a polygraph examination conducted by the Government if requested to do so.

Provided that the defendant satisfies the terms of this Plea Agreement, any information that the defendant truthfully discloses to the Government during the course of the defendant's cooperation, concerning this and any related offenses, will not be used against the defendant, directly or indirectly. The defendant understands that this agreement does not bar the defendant's prosecution for capital felonies, perjury, false statements, and/or obstruction of justice.

If the defendant has willfully and knowingly failed or should fail in any way to fulfill completely the defendant's obligations under this agreement, then the Government will be released from its commitment to honor all of its obligations to the defendant. Thus, if at any time the defendant should knowingly and willfully withhold evidence from, or is found to have provided false information to, the Government investigators or attorneys prior to or during the defendant's testimony before grand juries or in trials, or willfully and knowingly fails to appear for any scheduled court appearance or any scheduled meeting with law enforcement agents in the Middle District of Alabama, then the Government will be free: (1) to prosecute the defendant for perjury, false declaration, false statement, and/or obstruction of justice (18 U.S.C. §§ 1621, 1623, 1001, 1503); (2) to prosecute the defendant for all violations of federal criminal law which the defendant has committed; (3) to use against the defendant in all of those prosecutions and sentencings the information and documents that the defendant has disclosed or furnished to the Government during the course of the defendant's cooperation; (4) to recommend a maximum sentence; (5) to seek forfeiture of any and all forfeitable properties of the defendant; (6) to seek forfeiture of any appearance bond made by the defendant if the defendant fails to appear in the Middle District of Alabama for any scheduled court appearance or any scheduled meeting with law enforcement agents; and (7) to prosecute the defendant for the defendant's failure to appear

at any scheduled court appearance, pursuant to 18 U.S.C. 1073 or any other applicable federal criminal statute. The parties agree that the Government will have the sole discretion to decide whether defendant has breached this agreement.

SENTENCING GUIDELINES AND RECOMMENDATIONS

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence and the sentencing guidelines, if any, applicable to defendant's case will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant waives any constitutional challenge to the sentencing guidelines, waives indictment and trial by jury on all findings for sentencing, and stipulates that the Court may make all findings for sentencing and may make those findings by a preponderance of the evidence based upon any reliable evidence, including hearsay. Defendant understands that the Court is required to consider any applicable sentencing guidelines but may depart from these guidelines under some circumstances and may vary from these Guidelines in any case. Defendant acknowledges that defendant and defendant's attorneys have discussed the sentencing guidelines and defendant understands how the guidelines are applicable to defendant's case.

18 U.S.C. § 3553(a)

The defendant acknowledges that counsel for the defendant has conferred with the defendant prior to the signing of this plea agreement and advised the defendant that the Court, at sentencing, will consider the factors set forth in 18 U.S.C. § 3553(a), and explained to the

defendant each of those factors specifically including (1) the nature and circumstances of the offense and the history characteristics of the defendant; the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) the need for deterrence; (3) the need to protect the public; (4) the need to provide the defendant with needed educational or vocational training or medical care; (5) the kinds of sentences available; (6) the need to avoid unwanted sentencing disparities; and, (7) the need to provide restitution to victims.

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

1. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. Defendant further expressly waives the right to appeal the conviction and sentence on any other ground and waives the right to attack the sentence in any post-conviction proceeding. This waiver does not include the right to appeal or collateral attack on the grounds of ineffective assistance of counsel and prosecutorial misconduct.

2. The government does not waive its right to appeal any order dismissing the Indictment, the sentence imposed in this case, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to 18 U.S.C. § 3742(b), the defendant is released from this waiver as to any issue the defendant may raise pursuant to 18 U.S.C. § 3742(a).

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

1. The defendant, before entering a plea of guilty to Counts 1, 2, 3, 18, 19, and 34 as

provided for herein by said Plea Agreement, advises the Court that:

a. The discussions between the attorney for the Government and the attorney for the defendant towards reaching an agreed plea in this case have taken place with the defendant's authorization and consent.

b. The defendant further understands that, pursuant to 18 U.S.C. § 3013, said \$100.00 assessment fee is to be paid by the defendant on the date of sentencing and that, if a fine is imposed by the Court at sentencing, the defendant shall meet with a member of the Financial Litigation Section of the United States Attorney's Office on the day of sentencing and complete a written personal financial statement setting forth the defendant's assets and liabilities as of the date of the offense. The defendant will make an honest, good faith effort to pay said fine as directed by the Financial Litigation Section of the United States Attorney's Office. The defendant further understands that by completing the financial statement, the defendant is representing that it is true and accurate to the best of the defendant's information, knowledge, and belief.

c. The defendant understands that the defendant has a right to be represented by an attorney at every stage of the proceedings against the defendant herein and is represented by the defendant's undersigned attorney.

d. The defendant understands that the defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right to call witnesses in the defendant's own behalf, and the right not to be compelled to incriminate the defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the defendant waives the right to a trial by jury or to a trial before the Court.

e. The defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. The defendant further understands and advises the Court that the Plea Agreement as set forth herein and the plea to be entered by the defendant as a result thereof is voluntary on the defendant's part and is not the result of any force or threats or of any promises apart from the aforesaid Plea Agreement. The defendant further advises the Court that the Plea Agreement set forth herein is the result of prior discussions between the attorney for the Government and the attorney for the defendant, all conducted with the defendant's authorization, knowledge, and consent.

g. The defendant further advises the Court that the defendant's understanding of this Plea Agreement is as set forth in this document.

h. The defendant further understands that the Government can only make a recommendation, which is not binding upon the Court. However, if the Court does not accept the plea agreement, the defendant would be permitted to withdraw the defendant's plea, if the defendant so chooses.

i. The defendant further advises the Court that the defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crime charged in the Information herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the

defendant. However, the defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Information herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the defendant under oath, on the court record, and in the presence of counsel.

j. The defendant is satisfied that defense counsel has been competent and effective in representing defendant.

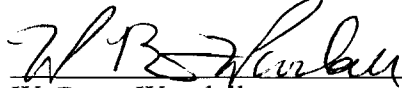
2. The undersigned attorneys for the Government and for the defendant represent to the court that the foregoing Plea Agreement is the agreement of the parties that has been reached pursuant to the Plea Agreement procedure provided for in Rules 11(c)(1)(A) and 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended. The attorney for the defendant further advises the Court that the defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the defendant has been advised of the defendant's right to plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the defendant; and that if the defendant pleads guilty, there will not be a further trial of any kind. Further, the defendant has been advised that if the defendant pleads guilty, the Court may ask questions about the offense to which the defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the defendant in a civil or criminal proceeding, but that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

3. The defendant understands that the U.S. Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the defendant's conduct related to the offense to which the plea is offered, as well as the defendant's criminal history. The offense level or criminal history category, as calculated by the Probation Officer and determined by the court, may differ from that projected by defendant's counsel or the U.S. Attorney.

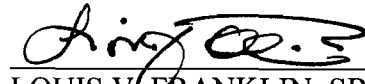
This 27th day of August, 2012.

Respectfully submitted,

GEORGE L. BECK, JR.
UNITED STATES ATTORNEY



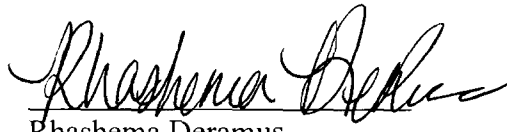
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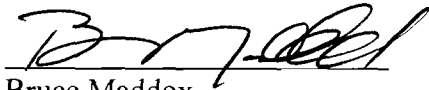
I have read the foregoing Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement that has been reached.

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL.



Rhashema Deramus
Defendant

8-26-12
Date



Bruce Maddox
Attorney for Defendant

8-26-12
Date